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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 NAVEEN MYSORE PRAKASH, et al.,
11 Plaintiffs,
12 v.
13 SAVI TECHNOLOGIES, INC., et al.,
14 Defendants.

No. C10-1845RSL

ORDER DENYING DEFENDANTS'
MOTION REQUESTING
CERTIFICATION FOR
INTERLOCUTORY APPEAL

15 This matter comes before the Court on defendants Savi Technologies, Inc.'s, Vigna,
16 Inc.'s, Ravi Prathipati's, and Jagadeesh Mupparaju's motion requesting certification for
17 interlocutory appeal of the Court's June 10, 2011 Order (dkt. #57) pursuant to 28 U.S.C. §
18 1292(b). Dkt. #63. In the June 10, 2011 Order, the Court denied plaintiff Naveen Prakash's
19 motion for partial summary judgment on his claims for violation of the Fair Labor Standards
20 Act ("FLSA"), Washington's Minimum Wage Act ("MWA"), and the Wage Rebate Act
21 ("WRA") against defendant Savi Technologies, Inc. Dkt. #57. The Court also denied
22 Prakash's motion seeking personal liability of defendants Prathipati and Mupparaju under the
23 MWA and the WRA. Id. However, the Court found that defendants failed to demonstrate that
24 Prakash was an exempt employee because they failed to demonstrate a genuine issue of
25 Id. at 7. Defendants seek certification of two narrow issues: (1) the Court's definition of
26

1 “predetermined” with respect to his claims for violation of the FLSA, and the MWA and (2)
2 the application of WAC 296-128-535. Dkt. #63 (Mot.) at 4-5.

3 “Section 1292(b) provides a mechanism by which litigants can bring an immediate
4 appeal of a non-final order upon the consent of both the district court and the court of
5 appeals.” In re Cement Antitrust Litig., 673 F.2d 1020, 1025-26 (9th Cir. 1982). Section
6 1292(b) provides:

7 When a district judge, in making in a civil action an order not
8 otherwise appealable under this section, shall be of the opinion that
9 such order involves a controlling question of law as to which there
10 is a substantial ground for difference of opinion and that an
immediate appeal from the order may materially advance the
ultimate termination of the litigation, he shall so state in writing in
such order. . . .

11 28 U.S.C. § 1292(b). To grant certification, the district court must find that (1) there is a
12 controlling question of law, (2) there is substantial grounds for difference of opinion, and (3)
13 an immediate appeal may materially advance the ultimate termination of the litigation. In re
14 Cement Antitrust Litig., 673 F.2d at 1026. A question is “controlling” if resolution of the
15 issue on appeal could materially affect the outcome of the litigation in the district court. Id.

16 **1. Meaning of Predetermined**

17 Defendants argue that there is substantial grounds for differences of opinion concerning
18 the definition of predetermined because “[t]here have been limited cases analyzing the
19 definition and there is a need for clarification of how the term is applied in the context of the
20 salary basis test.” Dkt. #63 at 10. However, the legislative history of section 1292(b)
21 “indicates that it was to be used only in extraordinary cases where decision of an interlocutory
22 appeal might avoid protracted and expensive litigation. It was not intended merely to provide
23 review of difficult rulings in hard cases.” U.S. Rubber Co. v. Wright, 359 F.2d 784, 785 (9th
24 Cir. 1966). The meaning of “predetermined” is, at best, nothing more than an uncertain
25 question of law relevant to only one of several causes of action alleged by two plaintiffs. Id.
26

1 **2. WAC 296-128-535**

2 Defendants argue that substantial grounds for differences of opinion concerning the
3 computer professional exemption exist because the Court did not address this exemption. Dkt.
4 #63 at 10. In the June 10, 2011 Order, the Court found that the computer professional
5 exemption (WAC 296-128-535) was subject to the salary basis test. Dkt. #57 at 4.
6 Defendants disagree and argue that “the Court’s decision not to analyze WAC 296-128-535
7 was in error because WAC 296-128-535 does not rely upon the application of the salary basis
8 test, it employs a ‘rate of pay’ analysis.” Dkt. # 68 (Reply) at 5. Even if the Court considers
9 the merits of the computer professional exemption, defendants fail to meet the certification
10 requirements. The professional computer exemption requires, among other things, a “rate of
11 pay” of at least \$27.63 per hour. WAC 296-128-535(1)(b). Defendants agree that the “regular
12 rate of pay” is determined by “dividing the amount of compensation received per week by the
13 total number of hours worked during that week.” WAC 296-128-550; dkt. #68 (Reply) at 6.¹
14 However, it is undisputed that Prakash was paid a “rate of pay” less than \$27.63 per hour
15 during some weeks. Dkt. #67 (Pond Decl.), Ex. B. Accordingly, whether Prakash is
16 considered exempt under the computer professional exemption is not a controlling question of
17 law and there is not substantial grounds for differences of opinion.

18 **3. Conclusion**

19 For all the foregoing reasons, the Court DENIES defendants’ motion requesting
20 certification for interlocutory appeal pursuant to 28 U.S.C. § 1292(b).

21 DATED this 6th day of September, 2011.

22 

23 Robert S. Lasnik
24 United States District Judge

25 ¹The Court assumes, for purposes of this analysis, that the regular “rate of pay” may apply to
26 both exempt and hourly employees.